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25th ANNIVERSARY OF THE COVENANTS ON HUMAN RIGHTS

(Not an official record or press release. This summary is made available to NGO representatives for their information and free dissemination).

On 12 December 1991, Ambassador Andreas Mavrommatis, Permanent Representative of Cyprus to the United Nations; Ms. Elissavet Stamatopoulou-Robbins, the Chief of the New York Office of the Centre for Human Rights, and Professor Stephen P. Marks, Professor, School of International and Public Affairs, Columbia University, briefed the NGO community on the 25th Anniversary of the Covenants on Human Rignts.

Ms. Stamatopoulou-Robbins spoke on behalf of Mr. Jan Martenson, the Under-Secretary-General for Human Rights, Centre for Human Rights, Geneva. She said that on 10 December 1966 the General Assembly adopted the International Covenants on Human Rights (the Covenant of Civil and Political Rights and the Covenant of Economic, Social, and Cultural Rights) which were the culmination of more than two decades of work within the United Nations. The adoption of the Covenants lent further substance to original human rights provisions in the United Nations Charter and made concrete advances possible in the areas of human rights. A first optional protocol was established to allow individual petitions, which has developed into a highly effective mechanism for the examination of individual complaints. Also, within the last year, a second optional protocol for the abolition of the death penalty has come into force.

The International Covenants on Human Rights embody principles which profoundly affect the relationships between human beings, between citizen and government, and between states. They make it clear that each person is invaluable, that an affront to his/her dignity is inexcusable, and that the fate of every human being, wherever and whoever he or she may be, must be a concern to all of us. Since 1976 when the Covenants entered into force and stages of implementation began, the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights have been at the forefront of international efforts. By today, the Covenant of Civil and Political Rights has been ratified by 101 states; the first optional protocol has been ratified by 60 states; and 10 states have ratified the second optional protocol. The Covenant of Economic, Social, and Cultural Rights has been ratified by 105 states.

Ambassador Mavrommatis said the international community felt from the very beginning that the Universal Declaration of Human Rights was an extremely useful document, but that elaborations were necessary. This elaboration was accomplished by the two Covenants. Therefore, although the Universal Declaration of Human Rights has and will always be a symbol of a country's dedication to human rights, Ambassador Mavrommatis stressed that he hoped it will not be the alibi of countries that do not ratify the Covenants. He welcomed the fact that the United States is proceeding with plans to ratify the Covenant of Civil and Political Rights. Another recent development is that Israel ratified both Covenants on 3 October 1991. This is most welcomed and quite encouraging. Ambassador Mavrommatis said he was disappointed that more countries, especially industrial nations like the United States, have not ratified the second optional protocol against the death penalty. It is hoped that more countries ratify both Covenants, thereby allowing their own records and actions to be judged by an impartial international body (the Committee on Civil and Political Rights).

Successes and failures

1) The eclipse of the Cold War and the collapse of totalitarianism in Eastern Europe, which is being emulated in other continents, unfortunately brought in its wake a number of human rights violations due mostly to misguided nationalism. Violations of economic and social rights, swift trials and overnight executions, witch hunting and violations of the right to life, mainly of minorities, as a result of civil war causing thousands of deaths, dismissal of employees on suspicion, without due process or compensation and restructuring of political systems without consulting the people.

2) Negative effects have developed because of the manner in which the Covenants divided human rights into the categories of civil and political rights and economic, social, and cultural rights. In practice this distinction cannot be clearly made. Ambassador Mavrommatis stressed that he hopes that this division was not a mistake, explaining that since the 1970s the western world has considered civil and political rights to be the indicators of democracy. The importance of economic, social, and cultural rights must not be overlooked; a place should be made to ensure these rights in the new world order. It is imperative to use human rights norms as a basis of conflict resolution, because it is only in such a way that durable solutions can be conceived and implemented.

3) The Committee on Civil and Political Rights was formed for the purpose of dialogue and persuasion rather than outright condemnation, which proved to be fairly successful. In the near future it is the intention of the committee to give the views of the committee as a whole and in writing on the record of compliance of each state-party with its obligations under the Covenants, rather than only the individual members (which is currently the practice). It is foreseen that decisions will be regarded as more important and urgent when the committee issues collective views and positive action might thus be forthcoming sooner.

4) Presently, the Committee on Civil and Political Rights is suffering from too much work which must be handled in such a sort period of time, (the committee meets three times each year for the duration of only three weeks per session). The committee must review each country's report as well as individual petitions, which is a very difficult and time consuming quasi-judicial task, Ambassador Mavrommatis said.

As a result, improvisational techniques and more reliance on assistance from the Secretariat are resorted to. One of the main problems is lack of time to do the committee's work in depth. In particular, considerable time lapses between the presentation of individual petitions and the decision of the committee. When this involves petitions concerning the death penalty, incarceration and torture, for example, it is obviously necessary to move more expeditiously.

Ambassador Mavrommatis concluded by calling on the new Secretary-General Boutros-Ghali to look into the whole human rights situation and take the necessary measures to ensure that the demands of the times can be met.

Professor Marks illustrated some of the problems relating to the Covenants by drawing attention to the reason why the United States, which has contributed greatly to the field of human rights, has not ratified either of the International Covenants on Human Rights. He said that the three arguments used the United States government against the ratification of the Covenant of Social, Economic, and Cultural Rights can be categorized as philosophical, practical, and legal.

1) Philosophically, an implicit distinction is made by the United States government between corrective and distributive justice. Human rights is seen as related to corrective justice, the concept of redressing wrongs committed against specific individuals. Distributive justice, on the other hand, has to do with allocating resources, and thus with policy making and defining objectives and goals - not with protecting rights.

2) Practically, the United States government questions what impact a 10-page text relating to 10 substantive rights, abstractly written, can have on the complex issues of access to and allocation of resources, economic structures, distribution, market forces, government regulations, and the myriad of other conditions of the economic, social, and cultural life of a nation.

3) Legally, human rights are meaningful as legally protected interests only so far as they can be enforced. They become rhetoric if there is neither expectation of compliance nor means of enforcing compliance. To be legally valid, rights must be subject to judicially enforceable sanctions. Thus, the prohibition against torture can be enforced through the police power and the courts, but U.S. diplomats question how one can legally enforce the right to an adequate standard of living (which is a guaranteed right in the Covenant on Economic, Social and Cultural Rights). If the Covenant on Economic, Social and Cultural Rights is to be taken seriously, he concluded, these three sets of problems must be addressed.

The Future of Human Rights

Professor Marks remarked that even though the Covenants are flanked with practical problems, they should not be seen merely as a useless exercise in propaganda and rhetoric. The official position of the United Nations is that human rights are interdependent, indivisible, and that the two categories of rights are of equal importance. As Ambassador Mavrommatis noted, he said, for the rest of the world an ideological divide developed: Socialist countries thought that primary emphasis should be placed on economic, social, and cultural rights, whereas Western countries thought that civil and political rights were most important.

Although developing countries have been among the leaders in ratifying both Covenants, they are confronted with severe economic and social conditions and attach particular importance to the issues articulated in the Declaration on the Right to Development. This declaration opens an opportunity for the United Nations to explore the ways in which one can take seriously the relationship between human rights (civil, political, economic, social, and cultural) and the development process. The challenge is to work with governments to integrate human rights obligations into the development planning process. Change will only come when the governmental officials (ministers of education, status of women, planning, labour, and social welfare) know about the obligations their country has contracted in the field of economic, social, and cultural rights.

Professor Marks returned to the U.S. Government's three arguments against ratification of the Covenant of Economic, Social, and Cultural Rights and proposed some answers that would reaffirm the rights in the Covenant.

1) Philosophically: rights are not only individual civil and political rights. Rights are legally protected interests which often and usually include material interests. The importance of material interest in the context of the promotion of human rights through the United Nations was made clear in Roosevelt's Four Freedoms, and the United Nations Charter, which rank freedom from want along side other freedoms. The theory of justice behind the affirmation of a right need not be limited at all to a particular type of justice. It is not necessary to choose between corrective and distributive justice. Moreover, distributive justice has been shown to be legitimate and effective as the basis for a great deal of social planning and legislation - including the principles of taxation, social welfare, collective bargaining and other areas, without creating problems over the philosophical implications of establishing rights and remedies.

2) Practically: the notion of right does not imply an entitlement to an immediate remedy or execution. Economic, social, and cultural rights in the International Covenant are subject to progressive implementation. In this regard, there are practical means that can be taken to help governments proceed with progressive implementation leading toward the full realization of these rights, which is what the Committee on Economic, Social and Cultural Rights is doing. This committee was created only four years ago when governments, after pressure from NGOs, realized that the sessional working group set up by the Economic and Social Council merely rubber stamped reports that arrived from states. Until the existence of the Committee on Economic, Social and Cultural Rights the United Nations really was not doing much about these rights. Now there is a forum for the practical issues of implementation to be addressed. Of particular importance in this regard is the role the Covenant assigns to international cooperation, by which is usually meant the role of specialized agencies of the United Nations. The role of the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO) is pre-eminent but has not yet been fully developed or demonstrated in the work of the committee.

3) Legally: All countries in the world, including the United States, have adopted legislation and many have extensive litigation in the area of economic, social, and cultural rights. Studies are now being carried out on the nature and impact of the litigation of economic, social, and cultural rights as legal rights that can be fully protected by the same administration of justice, court systems, and legislation as the other category of rights.

NGO action

The Covenant on Civil and Political Rights has made great strides over the past 25 years and progress can be measured. The achievements of the Covenant of Economic, Social, and Cultural Rights, however, still lie ahead. It is time for NGOs to take greater interest in the Covenant and be part of the positive development that can be expected in the coming years. Professor Marks concluded by suggesting ways in which NGOs might take part in shaping the future of this Covenant.

1) At the domestic level, NGOs should examine the reports that their own governments submit to the United Nations and prepare a critical evaluation of those reports. This of course only applies to the 105 countries which have ratified the Covenant of Economic, Social, and Cultural Rights, and therefore does not apply to the United States. 2) NGOs, preferably through a coalition of NGOs concerned with human rights and development, can approach their government to provide input into the process of preparing the reports. Because governments have a lack of staff and time to prepare the reports submitted to the United Nations, governments are always late in submitting the reports (some being a decade behind). Therefore, NGOs are almost always welcomed to work in cooperation with governments: providing studies, getting commissions to do studies, critiquing studies, being involved in inter-ministerial meetings and government outreach to NGOs. 3) NGOs can become the "monitors of the monitors" by attending the Committee on Human Rights meetings. Because there is no process of involvement with people actually struggling with human rights issues; it is up to the NGOs to create such a check and balance system. 4) United States citizens should do everything they can to participate with the dialogues that will lead to the United States ratifying the Covenants. Professor Marks suggested that NGOs from the United States should read Philip Alston's article on "U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy" in the American Journal of International Law (Vol. 84, pp.365-393, 1990).

Professor Marks concluded by stressing that the original three arguments against the ratification of the Covenant on Economic, Social, and Cultural Rights (practical, philosophical, and legal) obviously do not stand up against an in-depth scrutiny. Both categories of human rights constitute a coherent whole, which allows meaning to be given to Article 28 of the Universal Declaration of Human Rights - "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be realized". Obviously, the Covenant on Economic, Social, and Cultural Rights is indispensable to any approach to such a social order. Both covenants are necessary tools that NGOs may use as we move toward the 21st century.